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SUBJECT: RIFT OVER EU'S AUTHORITY TO REGULATE GAS SUPPLY

REF: BRUSSELS 1644

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This cable is sensitive but unclassified.

1. (U) SUMMARY: At the December 7 Energy Council in Brussels, Energy Ministers of the twenty-seven EU member states debated the European Commission's authority to regulate security of supply in member states. Discussions on security of gas supply revealed a split by a number of member states (The Netherlands, the UK, Germany and Italy) which contended the European Commission is encroaching on their national sovereignty over domestic energy resources. The incoming Spanish Presidency aims for final agreement on the legislation by June 2010. Other items addressed by the Council included energy efficiency legislation, the energy projects funded by the EU's 2008 stimulus plan, gas relations between Ukraine and Russia and the seat of the new Agency for the Cooperation of Energy Regulators (ACER). END SUMMARY.

#### Security of Gas Supply -----

2. (U) Discussions among the member states on the draft Regulation on Security of Gas Supply revealed a fundamental difference between a number of member states (notably The Netherlands, the UK, Germany and Italy) and the Commission on over the latter's mandate to impose measures on national energy authorities. Dutch Minister for Economic Affairs Maria van der Hoeven said: "There can be no doubt whatsoever about the sovereignty of member states when it comes to natural resources. That is why this regulation needs to be adapted in line with the Lisbon Treaty to guarantee this absolute sovereignty." She continued: "too much responsibility is given to the Commission, because it will get the final authority on plans and measures. That, I cannot accept." UK Minister of State for Energy and Climate Change Lord Hunt noted:

Begin quote: The question of energy security goes to the heart of a member state's responsibility. The UK's major concern is the extent and widely drawn powers of the Commission. We need a better understanding of the requirements the Commission is looking to impose on the member states and the criteria it would use in doing this. We remain to be convinced that such powers are required. End quote.

The German and Italian ministers made similar -albeit more nuanced - points, noting that national energy companies and national authorities are best placed to resolve energy supply issues.

3. (U) In addition to the powers of the Commission, Ministers discussed the "N-1" standard requirement, reverse flow, cost-sharing, emergency definitions and the definition of the "protected customer." Spain -- which will hold the Council Presidency during the first half of 2010 - announced a final agreement on the gas security legislation to be a goal of its presidency.

4. (SBU) Comment: Growing member state opposition to a strong role of the Commission in addressing the EU's energy supply emergencies will not be good news to Commission President Barroso, who is seeking to centralize energy policy in Brussels. In a letter to Energy Commissioner-designate Oettinger on November 27 (reftel), Barroso wrote that "a single market for energy and EU energy security policy" is one of new Commission's top priorities in energy policy. To make things more complicated, the new Regulation would also need to be approved by the European Parliament (EP), which has gained considerable power with the entry into force of the Lisbon Treaty on December 1, 2009. The EP's Rapporteur for the legislation, Spanish Christian-Democrat Alejo Vidal Quadras, has already introduced draft amendments to the Commission proposals.

End Comment.

#### Energy Efficiency Package

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15. (U) Ministers held a brief discussion on the so-called Energy Efficiency Package, which contains new measures on energy performance of buildings, labeling of energy-using products and fuel efficiency labeling of tires. With regard to the first two of these measures, the Council has already concluded an informal agreement with the European Parliament, but both institutions need to resolve procedural and legal issues before the legislation can be implemented. At a press conference following the Council meeting, Energy Commissioner Piebalgs called the agreement on the Energy Performance of Buildings Directive "the most important point on today's agenda" and "a big victory for the Swedish Presidency." The Commissioner said the EU was the first region in the world to agree on binding energy performance requirements for the building sector.

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The Regulation on the labeling of tires with respect to fuel efficiency has already been adopted by Council and Parliament and is awaiting publication in the EU's Official Journal. The new law aims to promote fuel-efficient and safe tires with low noise levels.

#### European Energy Recovery Plan (EERP)

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16. (U) Commissioner Piebalgs updated Ministers on progress on the 3.98 billion of the EU's economic recovery plan that the EU has earmarked for energy infrastructure and clean energy projects. (Note: On December 9, the Commission approved funding for 6 CCS projects (1 billion) and 9 offshore-wind projects (565 million). A decision on the final selection of the interconnection projects is foreseen for February 2010. The list of approved projects can be found at (<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/09/542&format=HTML&aged=0&lang=en&guiLanguage=en>) The Commissioner expected that 97% of the EERP budget, including almost 2.4 billion euros for energy infrastructure, would be committed by spring 2010.

17. (U) Luxembourg Economic Affairs Minister Jeannot Krecke criticized the Commission's rejection of an off-shore wind project in which Luxembourg was participating: "I am shocked that we are the only country to have been refused inclusion in the list," he said. (Comment: Someone in the Commission apparently discovered that Luxembourg is a landlocked country. End comment.)

#### Russia/Ukraine

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18. (U) During a closed-door lunch meeting, ministers discussed the status of gas relations between Ukraine and the Russian Federation. In the subsequent press conference, Swedish Minister Maud Olofsson said that thanks to the extensive discussions between the EU, Russia and the Ukraine, the level of tensions and misunderstandings had been reduced significantly. A much greater level member states now than I hope very soon, but I have always agreed on a solution. In addition, it will participate in the creation of European network rules. The cities of Bucharest, Bratislava and Ljubljana also sought to host the agency. (Note: Romania lobbied the USG to support its bid to host ACER. End note.)

110. (U) Commissioner Piebalgs praised management of the Swedish Presidency on this issue. He said the open discussions and transparent procedures were a departure from the previous methods of allocating seats for EU agencies. He explained that member states had agreed beforehand that the city with the most votes would get the agency. "None of the ministers left the room with bitterness in his heart," he said.

#### Electricity Market Integration

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111. (U) On the fringes of the Council meeting, seven Central European and Eastern European member states signed a memorandum of understanding to establish the Central Eastern Forum for Electricity Market Integration. The forum will convene at the ministerial level to support further integration of the electricity markets in Central and Eastern Europe.

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